

Update: Friend of the Court Domestic Violence Resource Book (Revised Edition)

CHAPTER 8

Criminal Court Proceedings Involving Domestic Violence

Part I — Elements of Common Domestic Violence Crimes

8.4 Stalking

C. Defenses to Stalking

1. Legitimate Purpose Defense

On page 224 after the case summary of *People v Coones*, insert the following case summary:

- ♦ *Nastal v Henderson & Associates Investigations, Inc.*, ___ Mich ___, ___ (2005):

The Michigan Supreme Court held that surveillance by a licensed private investigator is conduct that serves a legitimate purpose as long as the surveillance serves or contributes to the purpose of obtaining information, as permitted by the Private Detective License Act, MCL 338.821 *et seq.* MCL 338.822(b) provides that licensed private investigators may obtain information with reference to any of the following:

“(i) Crimes or wrongs done or threatened against the United States or a state or territory of the United States.

“(ii) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of a person.

“(iii) The location, disposition, or recovery of lost or stolen property.

“(iv) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or property.

“(v) Securing evidence to be used before a court, board, officer, or investigating committee.”

In *Nastal*, the plaintiff sued the owner-operator of a tractor-trailer for negligence. The owner-operator’s insurance company hired defendant, a licensed private investigation firm, to perform surveillance of plaintiff. Defendant surveilled plaintiff on four separate occasions. On each occasion, the surveillance was terminated because the investigators determined that the plaintiff knew he was being observed and any further surveillance at that time would serve no further purpose. The plaintiff filed a civil stalking claim pursuant to MCL 600.2954. The defendants argued that the investigators were engaged in conduct that served a legitimate purpose under MCL 750.411h(1)(c) and therefore could not be guilty of stalking. The Michigan Supreme Court agreed with the defendants and held that when a licensed private investigator is conducting surveillance to obtain evidence concerning a party’s claim in a lawsuit, the activity falls within the legitimate purpose defense to stalking. *Nastal, supra* at ____.